

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LONNIE LEWIS,

)

Plaintiff,

)

v.

CIVIL ACTION NO.: 2:05CV690-13

)

FREIGHTLINER OF HOUSTON,
INC.,

)

)

)

Defendant.

AFFIDAVIT OF ROGER S. POSER

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, Edris Jenkin, Notary Public in and for said county and state, personally appeared Roger S. Poser, General Counsel of Houston Freightliner, Inc., who is known to me, and who, after first being duly sworn, did state as follows:

1. My name is Roger S. Poser, and I am over the age of 21 years. I am a resident of the State of Texas, and I execute this affidavit for the purpose of the above-styled lawsuit.
2. I base this affidavit on my personal review and examination of the business records of Houston Freightliner, Inc. (hereinafter sometimes referred to "Houston Freightliner"). I am the General Counsel of Houston Freightliner, Inc., and I am custodian of all records.
3. Attached to this affidavit as Exhibit "1" is a true and correct copy of a repair order dated February 13, 2005, and signed by Lonnie Lewis, the Plaintiff in this lawsuit. Said repair order is a true, correct and genuine copy of records maintained in the normal course of business of Houston Freightliner.

EXHIBIT "A"

4. According the records of Houston Freightliner, Lonnie Lewis signed the repair order (Exhibit "1") regarding a Freightliner vehicle, Serial No.: VL794813, on February 13, 2005. The repair order was executed by Lonnie Lewis as a condition and part of a transaction relating to the repair of a Freightliner vehicle, Serial No.: VL794813. The repair order includes a Mediation/Arbitration Agreement between the parties. The Mediation/Arbitration Agreement between Lonnie Lewis and Houston Freightliner states:

The undersigned parties recognize and acknowledge that their relationship and business dealings and contracts involve Interstate Commerce and hereby submit all controversies, claims and matters of difference of any nature whatsoever (which are or may be directly or indirectly related to this repair Agreement in any manner whatsoever) to non-binding mediation and binding arbitration in Texas in accordance with the Federal Arbitration Act (9 USC 8 §§ 1-16) and pursuant to the Commercial/Business rules and procedures for mediation and arbitration Association. This submission and agreement to mediate and arbitrate shall be specifically enforceable. The parties hereto agree to submit all controversies to a one day mediation as a condition precedent to any arbitration proceeding. Arbitration may, thereafter, proceed in the absence of any party if written notice (pursuant to the American Arbitration Association's rules and regulations) of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such arbitration proceedings. Such awards shall be final and binding on all parties to the extent and in the manner provided by the Federal Arbitration Act. All such awards may be filed with the Clerk of District Court in Harris County, Texas, as a basis for judgment and the issuance of execution for collection and, at the election of the party making such filing, with the clerk of one or more other court, state or federal, having jurisdiction of the party against whom such an award is rendered or his property.

5. The arbitration agreement between Lonnie Lewis and Houston Freightliner acknowledges that the relationship and business dealings and contracts between the parties involve interstate commerce. The arbitration agreement further provides that the parties agree to submit all controversies, claims and matters of difference of any nature whatsoever to arbitration in Texas pursuant to the Federal Arbitration Act and the American Arbitration Association rules and regulations.

6. Houston Freightliner, Inc., is a Delaware corporation with its principal and sole place of

business in the State of Texas. Houston Freightliner, Inc., is not incorporated in and does not have its principal place of business in the State of Alabama. A copy of records pertaining to Houston Freightliner, Inc., received from the office of the Secretary of State of the State of Texas are attached hereto as Exhibit "2". The records attached as Exhibit "2" include a copy of the certificate of authority issued to Houston Freightliner, Inc., by the Secretary of State of the State of Texas authorizing Houston Freightliner, Inc., to transact business in the State of Texas. Attached as Exhibit "3" is a true and correct copy of the Certificate of Account Status -- Letter of Good Standing received by Houston Freightliner, Inc., from the Texas Comptroller of Public Accounts dated July 19, 2005, and certifying that Houston Freightliner, Inc., is in good standing with the Office of the Texas Comptroller of Public Accounts.

7. As stated above, Houston Freightliner, Inc., is a Delaware corporation with its principal and sole place of business located in Houston, Texas. Houston Freightliner is not incorporated in the State of Alabama. Houston Freightliner has never contracted in Alabama to supply services or goods in the State of Alabama. Houston Freightliner does not advertise its goods or services in the State of Alabama or engage in any other activity of any nature whatsoever in the State of Alabama. Houston Freightliner, Inc., does not own any real or personal property located in the State of Alabama. Houston Freightliner, Inc., is not licensed in, or authorized to do business in the State of Alabama. Houston Freightliner, Inc. does not solicit business or engage in any other persistent course of conduct or business in the State of Alabama. Houston Freightliner does not derive substantial revenue from goods used or consumed in the State of Alabama or from services rendered in the State of Alabama.

8. The subject repair order and arbitration agreement was executed in Houston, Texas. All repairs to the subject vehicle by Defendant were performed in Houston, Texas. All employees of Houston Freightliner reside in the State of Texas. Houston Freightliner has no agents or employees located in the

State of Alabama. All witnesses Houston Freightliner expects to call at the trial of this action reside in the State of Texas.

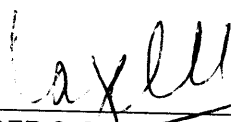
9. The Freightliner vehicle which is the subject of the above-styled lawsuit was manufactured outside the State of Alabama and traveled in interstate commerce prior to the transaction between Houston Freightliner and Mr. Lonnie Lewis. The Freightliner vehicle was manufactured by Freightliner, LLC. Attached hereto as Exhibit "4" are copies of records of the Secretary of State of the State of Oregon which reflect that Freightliner, LLC, has its principal place of business located in Portland, Oregon. No members of Freightliner, LLC are believed to be residents of, incorporated in, or have their principal place of business in the State of Alabama.

10. The subject vehicle in question is clearly subject to interstate commerce and has traveled in interstate commerce. The Plaintiff and Houston Freightliner expressly acknowledged and agreed that their relationship and business dealings and contracts involved interstate commerce and expressly agreed to submit all controversies, claims and matters of difference of any nature whatsoever to binding arbitration in Texas in accordance with the Federal Arbitration Act.

11. Houston Freightliner, Inc., stands ready, willing and able to file all claims, forms and filing fees pursuant to the terms and conditions of the arbitration agreement between the parties and executed by Lonnie Lewis and as required or mandated by the American Arbitration Association upon the Court's entry of a stay of proceedings and order compelling arbitration.

12. I have read the above and foregoing affidavit of five (5) pages, including the signature page, and I certify that the facts contained herein are true and correct based on my personal examination and review of the business records of Houston Freightliner, Inc.

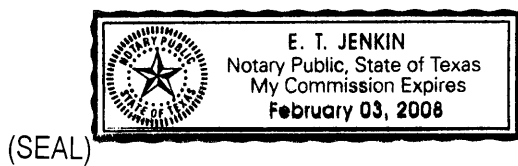
Further affiant saith not.

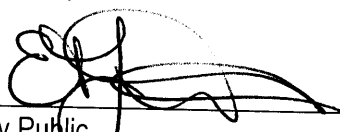


ROGER S. POSER

STATE OF TEXAS
COUNTY OF HARRIS

Sworn to and subscribed to before me this the 26th day of July, 2005.





Notary Public
My Commission Expires: February 03, 2008

07/22/2005 15:35
Select Transportation Resources, LLC

REPAIR ORDER INFORMATION

PHONE <u>334-281-5627</u>	CONTACT _____
CELL PHONE <u>334-467-9241</u>	PAGER NO. _____
TIME <u>11:30 A</u>	DATE <u>2-13</u>
WAITING <u>(Y)</u> N	REPAIR ORDER NO.

LOCATION: HFI-S HFI-P HFI-E HFI-B TBGC BMT CCF	4) P.O. NO.
1) SERVICE WRITER	5) ESTIMATE
2) SERIAL # <u>VL994813</u>	6) MILEAGE <u>844965</u>
3) CUSTOMER ACCOUNT NO.	7) KEY TAG NO. <u>1081</u>
NAME <u>LONNIS LEWIS</u>	8) METHOD/PAYMENT
COMPANY <u>ROBINSON TANKS</u>	9) UNIT LOCATION <u>1ST ROW</u>
ADDRESS <u>5130 MOBILE HWY</u>	10) TRUCK MODEL <u>BULK CLASSIC</u>
CITY/STATE <u>MONTGOMERY, AL</u>	11) UNIT <u>110095</u>

1	TYPE	<u>CK 1 RPT FOR ENGINE WILL NOT IDLE</u>
	CONDITION	<u>AT LOW IDLE - SEEMS TO NO OK ONCE IT GETS ABOVE 1200 RPM</u>
2	TYPE	
	CONDITION	
3	TYPE	
	CONDITION	
4	TYPE	
	CONDITION	
5	TYPE	
	CONDITION	
6	TYPE	
	CONDITION	
7	TYPE	
	CONDITION	

STATEMENT AND DISCLAIMER OF WARRANTY: THE FACTORY WARRANTY CONSTITUTES THE ONLY AND ALL OF THE WARRANTIES WITH RESPECT TO THE SALE OF PARTS AND SERVICE ON THE VEHICLE DESCRIBED ABOVE. THE SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THIS ITEM/ITEMS.

MEDIATION/ARBITRATION AGREEMENT: The undersigned parties recognize and acknowledge that their relationship and business dealings and contracts involve Interstate Commerce and hereby submit all controversies, claims and matters of difference of any nature whatsoever (which are or may be directly or indirectly related to this repair Agreement in any manner whatsoever) to non-binding mediation and binding arbitration in Texas in accordance with the Federal Arbitration Act (9 USC § 1-16) and pursuant to the Commercial/Business rules and procedures for mediation and arbitration Association. This submission and agreement to mediate and arbitrate shall be specifically enforceable. The parties hereto agree to submit all controversies to a one day mediation as a condition precedent to any arbitration proceeding. Arbitration may, thereafter, proceed in the absence of any party if written notice (pursuant to the American Arbitration Association's rules and regulations) of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such arbitration proceedings. Such awards shall be final and binding on all parties to the extent and in the manner provided by the Federal Arbitration Act. All such awards may be filed with the Clerk of District Court in Harris County, Texas, as a basis for judgment and the issuance of execution for collection and, at the election of the party making such filing, with the clerk of one or more other courts, state or federal, having jurisdiction of the party against whom such an award is rendered, or his property, above and (1) understands and agrees that payment for labor and goods, wares, parts, materials, merchandise and other personalty must be made in full by cash, approved credit account, or approved credit card at the time the repairs are complete and before the vehicle is released and; (2) unconditionally promises to pay and guarantee, for himself and his principal, all mediation and/or arbitration fees, attorney's fees, court costs, repossession fees and all other costs, fees and expenses which may be incurred to collect repair and parts and material charges and costs.

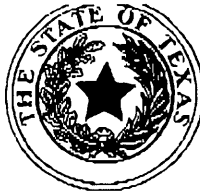
TEXAS PROPERTY CODE AND U.C.C. NOTICE: The undersigned is the person or expressly authorized agent of the person responsible to pay for the repairs to the vehicle described above and personally agrees to pay and understands that as provided by § 70.01 et seq, Texas Property Code, possession of the vehicle may be retained until all repair charges have been paid in full and that if possession is relinquished in return for a check, money order, or a credit card transaction on which payment is stopped, has been dishonored because of insufficient funds, no funds or because the drawer or the maker of the order or the credit card holder has no account or the credit card account has been closed, the lien provided by the Texas Property Code continues and the vehicle is subject to repossession in accordance with § 9.609 and § 9.610 Texas Business and Commerce Code.

HOUSTON FREIGHTLINER, INC. IS NOT RESPONSIBLE FOR LOSS OR DAMAGE TO, OR THEFT OF ANY VEHICLE (OR ANY PERSONAL PROPERTY IN OR ON THE VEHICLE) LEFT ON ITS PREMISES FOR REPAIR, STORAGE OR INSPECTION.

X [Signature]
SIGNATURE OF PERSON RESPONSIBLE OR AGENT FOR PERSON RESPONSIBLE FOR PAYMENT

EXHIBIT "1"

WJB-CA



The State of Texas
Secretary of State

CERTIFICATE OF AUTHORITY
OF

HOUSTON FREIGHTLINER, INC.
CHARTER NUMBER 00080532

THE UNDERSIGNED, AS SECRETARY OF STATE OF THE STATE OF TEXAS, HEREBY CERTIFIES THAT AN APPLICATION FOR CERTIFICATE OF AUTHORITY FOR THE ABOVE CORPORATION, DULY SIGNED HAS BEEN RECEIVED IN THIS OFFICE AND IS FOUND TO CONFORM TO LAW.

ACCORDINGLY THE UNDERSIGNED, AS SUCH SECRETARY OF STATE, AND BY VIRTUE OF THE AUTHORITY VESTED IN THE SECRETARY BY LAW, HEREBY ISSUES THIS CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE FROM AND AFTER THIS DATE, FOR THOSE PURPOSES SET FORTH IN THE APPLICATION, UNDER THE NAME OF

HOUSTON FREIGHTLINER, INC.

AND ATTACHES HERETO A COPY OF THE APPLICATION FOR SUCH CERTIFICATE.

DATED JUNE 19, 1989

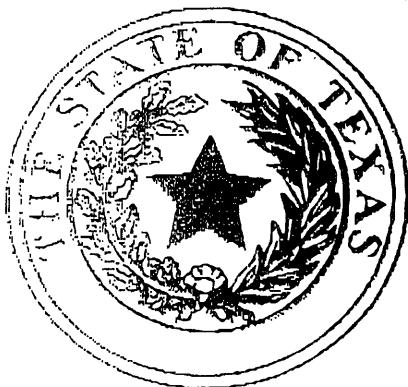


EXHIBIT "2"

George S. Boyd Jr.

Secretary of State



The State of Texas
Secretary of State

JUNE 20, 1989

C T CORPORATION SYSTEM
520 PIKE ST.
SEATTLE ,WA 98101

RE:
HOUSTON FREIGHTLINER, INC.
CHARTER NUMBER 00080532-06

ENCLOSED IS THE CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THE STATE OF TEXAS, ISSUED TO THE ABOVE NAMED CORPORATION, INCORPORATED UNDER THE LAWS OF DELAWARE

AS A CORPORATION, YOU ARE SUBJECT TO STATE TAX LAWS. SOME NON-PROFIT CORPORATIONS ARE EXEMPT FROM THE PAYMENT OF FRANCHISE TAXES AND MAY ALSO BE EXEMPT FROM THE PAYMENT OF SALES AND USE TAX ON THE PURCHASE OF TAXABLE ITEMS. IF YOU FEEL THAT UNDER THE LAW YOUR CORPORATION IS ENTITLED TO BE EXEMPT YOU MUST APPLY TO THE COMPTROLLER OF PUBLIC ACCOUNTS FOR THE EXEMPTION. THE SECRETARY OF STATE CANNOT MAKE SUCH DETERMINATION FOR YOUR CORPORATION.

IF WE CAN BE OF FURTHER SERVICE AT ANY TIME, PLEASE LET US KNOW.



VERY TRULY YOURS,

Gen S Bayard Jr.

Secretary of State

Certificate of Account Status - Letter of Good Standing

Page 1 of 1



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
CAROLE KEETON STRAYHORN • COMPTROLLER • AUSTIN, TEXAS 78774

July 19, 2005

CERTIFICATE OF ACCOUNT STATUS

THE STATE OF TEXAS
COUNTY OF TRAVIS

I, Carole Keeton Strayhorn, Comptroller of Public Accounts of the State of Texas, DO HEREBY CERTIFY that according to the records of this office

HOUSTON FREIGHTLINER INC

is, as of this date, in good standing with this office having no franchise tax reports or payments due at this time. This certificate is valid through the date that the next franchise tax report will be due May 15, 2006.

This certificate does not make a representation as to the status of the corporation's Certificate of Authority, if any, with the Texas Secretary of State.

This certificate is valid for the purpose of conversion when the converted entity is subject to franchise tax as required by law. This certificate is not valid for the purpose of dissolution, merger, or withdrawal.

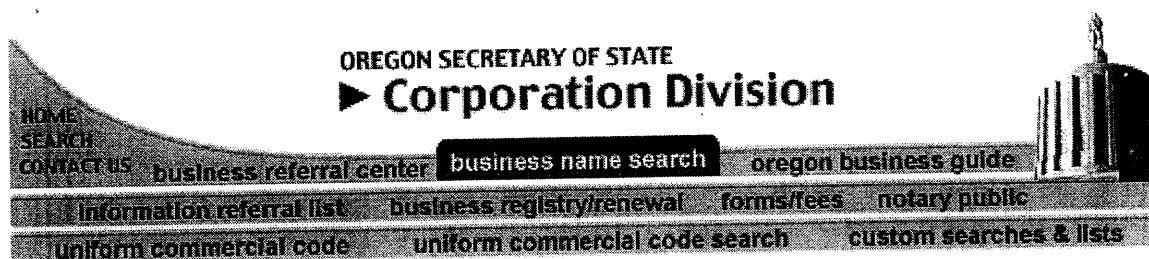
GIVEN UNDER MY HAND AND
SEAL OF OFFICE in the City of
Austin, this 19th day of
July 2005 A.D.

Carole Keeton Strayhorn
Texas Comptroller

Taxpayer number: 19310009287
File number: 0008053206

Form 05-304 (Rev. 02-03/14)

EXHIBIT "3"



Business Name Search

New Search Printer Friendly **Business Entity Data** 07-25-2005 12:39

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
751048-86	FLLC	ACT	DELAWARE	05-02-2000		
Entity Name	FREIGHTLINER LLC					
Foreign Name						

New Search Printer Friendly **Associated Names**

Type	PPB	PRINCIPAL PLACE OF BUSINESS	
Addr 1	4747 NORTH CHANNEL AVE		
Addr 2			
CSZ	PORTLAND	OR	97217
Country	UNITED STATES OF AMERICA		

Type	AGT	REGISTERED AGENT	Start Date	05-02-2000	Resign Date	
Of Record	003292-27	C T CORPORATION SYSTEM				
Addr 1	388 STATE ST STE 420					
Addr 2						
CSZ	SALEM	OR	97301	3581	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS	
Addr 1	ATTN: DEE HEDKE		
Addr 2	PO BOX 3820		
CSZ	PORTLAND	OR	97208
Country	UNITED STATES OF AMERICA		

Type	MEM	MEMBER	
Not of Record	DAIMLER CHRYSLER NORTH AMERICA HOLDING CORPORATION		
Addr 1	4747 N CHANNEL AVE		
Addr 2			
CSZ	PORTLAND	OR	97217
Country	UNITED STATES OF AMERICA		

EXHIBIT "4"

[New Search](#) [Printer Friendly](#) **Name History**

Business Entity Name	Name Type	Name Status	Start Date	End Date
FREIGHTLINER LLC	EN	CUR	05-02-2000	

Please read before ordering [Copies](#).

[New Search](#) [Printer Friendly](#) **Summary History**

Image Date	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
06-17-2005	ANNUAL REPORT PAYMENT	06-17-2005	06-16-2005	SYS		
05-06-2005	NOTICE LATE ANNUAL	05-06-2005		SYS		
03-24-2004	CHANGE OF MAILING ADDRESS	03-24-2004		FI		
03-23-2004	ANNUAL REPORT	03-23-2004		FI		
03-25-2003	ANNUAL REPORT PAYMENT	03-25-2003		SYS		
06-13-2002	ANNUAL REPORT	06-13-2002		FI		
05-03-2002	NOTICE LATE ANNUAL	05-03-2002		SYS		
06-08-2001	CHANGE OF REGISTERED AGENT/ADDRESS	06-08-2001		FI		
04-09-2001	AMENDED ANNUAL REPORT	04-09-2001		FI		
05-02-2000	NEW FILING	05-02-2000		FI		

[About Us](#) | [Announcements](#) | [Laws & Rules](#) | [Feedback](#)
[Site Map](#) | [Policy](#) | [SOS Home](#) | [Oregon Blue Book](#) | [Oregon.gov](#)

For comments or suggestions regarding the operation of this site,
please contact : businessregistry.sos@state.or.us



© 2005 Oregon Secretary of State. All Rights Reserved.